

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

**THE KAY COMPANY, LLC,
et al.**

Plaintiffs,

v.

**CIVIL ACTION NO. 1:13-CV-151
(Honorable John Preston Bailey)**

**EQT PRODUCTION COMPANY,
et al.**

Defendants.

**DEFENDANTS' MOTION TO EXCLUDE FROM CLASS
SETTLEMENT FOUT LEASE LITIGATED IN SEPARATE ACTION**

Defendants, by counsel, move the Court for an Order excluding John Fout, Nancy Fout, J&N Management, LLC and J&N Management Enterprises, LLC (hereinafter collectively referred to as “the Fouts”) from the class settlement preliminarily approved by this Court with regard to their interest in EQT Production Lease 300648. As set forth below, the Fouts filed a separate royalty deduction claim against EQT Production in this Court regarding EQT Production Lease 300648 and judgment was entered against them on their claim after a jury trial. Consequently, the Fouts must be excluded from the class settlement with regard to their interest in EQT Production Lease 300648.¹ In support of this Motion, Defendants state as follows:

1. John Fout and Nancy Fout filed a separate a separate royalty deduction claim against EQT Production regarding EQT Production Lease 300648 in this Court on April

¹ Nancy Fout also owns an interest in EQT Production leases 300606, 300653, 300663, 300670, 300685, 300688 and 122125. J&N Management owns an interest in EQT Production leases 300606, 300653, 300663, 300670, 300685, 300688, 122125, 870053.03 and 870380.01. EQT Production Lease 300648 is the only lease which is the subject of this motion.

22, 2015. *Fout et al. v. EQT Production Company*, United State District Court for the Northern District of West Virginia, 1:15-cv-00068 [D.E. 1]. J&N Management, LLC and J&N Management Enterprises, LLC were added as party plaintiffs in that case on February 9, 2018. [D.E. 141]. The case was fully litigated and a jury returned a verdict in EQT's favor on April 11, 2018. [D.E. 169]. A judgment in favor of EQT was entered that same day. [D.E. 170]. The Court denied the Fout's Motion to Alter or Amend the Judgment on July 26, 2019. [D.E. 180]. The Fouts did not appeal.

2. The Fouts are precluded by the doctrine of res judicata from participating in the class settlement preliminary approved by this Court with regard to their interest in EQT Production Lease 300648. The Fourth Circuit has held: "A party invoking res judicata must establish three elements: (1) a previous final judgment on the merits, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits." *Union Carbide Corp. v. Richards*, 721 F.3d 307, 314-15 (4th Cir. 2013). *See also Providence Hall Assocs. Ltd. P'ship v. Wells Fargo Bank, N.A.*, 816 F.3d 273, 276 (4th Cir. 2016) (same). In the present case, all three of the elements are met and res judicata precludes the Fouts from participating in the class settlement. In *Fout*, a judgment was entered against the Fouts and in favor of EQT for identical claims raised by the Plaintiffs on behalf of themselves and class members in this litigation. Consequently, the Fouts are not entitled to participate in the class settlement preliminary approved by this Court with regard to their interest in EQT Production Lease 300648.

3. For all the foregoing reasons, the Court should enter an Order excluding John Fout, Nancy Fout, J&N Management, LLC and J&N Management Enterprises, LLC from the class settlement with regard to their interest in EQT Production Lease 300648.

EQT PRODUCTION COMPANY; EQT CORPORATION; EQT ENERGY, LLC; EQT INVESTMENTS HOLDINGS, LLC; EQT GATHERING, LLC; and EQT MIDSTREAM PARTNERS, LP,

By Counsel.

/s/ David K. Hendrickson 06/06/2019

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CERTIFICATE OF SERVICE

I, David K. Hendrickson, counsel for Defendants, do hereby certify that on the **5th day of June, 2019**, a copy of the foregoing **DEFENDANTS' MOTION TO EXCLUDE FROM CLASS SETTLEMENT FOUT LEASE LITIGATED IN SEPARATE ACTION** was served upon counsel of record using the Court's CM/ECF system which will deliver true and exact copies to the following counsel of record:

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